

RECORDING REQUEST BY

95 436302

WHEN RECORDED MAIL TO

NAME

VICTOR PENA

MAILING
ADDRESS

13816 S. ARLINGTON AVE
LOS ANGELES, CALIF 90031

CITY, STATE
ZIP CODE

LOS ANGELES CALIF

90031

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

11:01 AM MAR 27 1995

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FEE \$ 55 F

COVENANT AND AGREEMENT FOR FUTURE USE

OF PROPERTY

LOS ANGELES COUNTY RECORDER'S OFFICE
P.O. BOX 115, LOS ANGELES, CA 90053-0115

RECORDING RECEIPT

LOS ANGELES
COUNTY

RECORDER VED FOR RECORD ON
MAR. 27 '95

MAR 27 1995

95 436302

TO

INCL.

0057 MAR. 27 '95

RECORD 55.00

TOTAL 55.00

CASH 55.00

CHNG .00

NEEDS

\$

\$

REGISTRAR-RECORDER/COUNTY CLERK

BY

DEPUTY

R198 2/94

LOS ANGELES
COUNTY
RECORDER
MAR. 27 '95

COPYFEE 10.00
TOTAL 10.00
CASH 10.00
NEEDS

R428 5/94

RECORDING REQUESTED BY

Victor T. Pena

WHEN RECORDED MAIL TO

NAME: Victor T. Pena

MAILING:
ADDRESS: 138 North San Fernando Road

CITY, STATE: Los Angeles, CA
ZIP CODE: 90031

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE (S)

COVENANT AND AGREEMENT FOR FUTURE USE OF PROPERTY

This Covenant and Agreement For Future Use of Property ("Covenant") is entered into by Victor T. Pena, the owner of record of certain property more particularly described below and that is situated in the City of Los Angeles, State of California, and the County of Los Angeles. The legal description of the property governed by this Covenant is:

Parcel 024 of Parcel Map No. 5447, in Los Angeles City, County of Los Angeles, State of California, as per map recorded in Book No. 5447, Pages 014 and 024 of Parcel Maps, in the offices of the County Recorder of Los Angeles County, California

This property, Victor Industrial Batteries ("Capped Parcel"), will be maintained pursuant to the directive given by L.A. County dated September 17, 1992 and pursuant to the Operation and Maintenance Plan approved by DTSC (Exhibit A). Certain obligations and limitations contained in this Covenant are intended to ensure that the integrity of the Cap is maintained to protect the public's health and safety.

ARTICLE I
GENERAL PROVISIONS

1.01. Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, limitations, and conditions, (collectively referred to as "Limitations"), upon and subject to which the Capped Parcel shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the limitations shall run with the land, inure to the benefit of the Capped Parcel, and, except as specifically provided otherwise herein, pass with each and every portion of the Capped Parcel and shall apply to and bind the respective successors in interest thereof. Each and all to the limitations are imposed upon each portion of the Capped Parcel as mutual equitable servitude in favor of the Capped Parcel and every portion thereof. This Covenant inures to Victor Industrial Batteries and the Department of Toxic Substances Control (DTSC), which may enforce the terms hereof, and their heirs, successors or assignees, and does not inure to the benefit of any third parties. Each and all

of the Limitations are imposed pursuant to Section 25355.5 of the California Health and Safety Code and run with the land pursuant to the above listed section. Each and all of the Limitations are enforceable by DTSC.

1.02. Concurrence of Owners Presumed. All purchasers, owners, lessees or possessors of any portion of the Capped Parcel shall be deemed by their purchase, ownership leasing or possession of such Capped Parcel, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees and lessees of such owners, heirs, successors, and assignees, that the Limitations as herein established must be adhered to for the benefit of future Owners and Occupants, as hereinafter defined, and that their interest in the Capped Parcel shall be subject to the Limitations contained herein.

1.03. Incorporation Into Deeds and Leases.

Victor T. Pena covenants that the Limitations set forth in this Covenant shall be incorporated by reference in each and all deeds, and the provisions of Paragraph 3.01 hereof shall be incorporated into all leases of any portion of the Capped Parcel. Any lease of any portion of the Capped Parcel shall prohibit any excavation, earth movement or any construction of Improvements on any portion of the Capped Parcel, unless the prospective lessee desiring to perform excavation, earth movement, or construction receives a copy of this Covenant and agrees in writing to be bound by the terms and conditions hereof. Owner agrees to provide DTSC with thirty (30) days prior written notice of any lease which permits such

excavation, earth movement, or construction. Owner further agrees to comply with the requirements of California Health and Safety Code Section 25359.7.

ARTICLE II DEFINITIONS

2.01. DTSC shall mean the Department of Toxic Substances Control shall include its successor agencies, if any.

2.02. Director. "Director" shall mean the Director of DTSC.

2.03. Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, paved parking areas, parking structures areas paved with asphalt, concrete or similar material used for parking, recreation or other purposes, constructed or placed upon any portion of the Capped Parcel.

2.04. Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Capped Parcel.

2.05. Owner. "Owner" shall mean the owner at the time of the recordation of this Covenant, or its successors in interest, including heirs and assignees, who hold title to all or any portion of the Capped Parcel.

2.06. Excavation. "Excavation" shall mean the excavation of earth within three feet above the Primary Containment Liner on the Capped Parcel.

2.07. Earth Movement. "Earth Movement" shall mean the

movement of earth within three feet above the Primary Containment Liner.

ARTICLE III
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01. Limitations on Use.

(a) Improvements may be constructed on the Capped Parcel or any portion thereof and used for all lawful purposes except as hereinafter specifically prohibited.

(b) Owner covenants that:

(1) No use of, or activity on the Capped Parcel shall be allowed to disturb the asphalt/capping or any monitoring or control system required unless the Owner gives written notice of the proposed use of activity to DTSC at least 90 days prior to the commencement thereof. At least 45 days prior to the commencement of such use or activity, Owner shall submit engineering plans describing the work to be performed that will cause disturbance to the Primary Asphalt Capping, any impact to the Primary Asphalt Capping, or any hazardous substances below it and the manner by which the Cap will be restored to meet the performance standards set forth in the workplan. Except as hereinafter provided,

the Owner shall, upon expiration of such 45 days, be permitted to proceed with such use or activity set forth on the submitted plans.

(2) Prior to commencement of any such activity or use, DTSC may order the Owner to halt the use or activity ("Stop Order") if DTSC determines that the proposed use or activity may increase the potential hazard to human health or the environment. DTSC shall advise the Owner of the reasons for the Stop Order and state what steps must be taken to protect the human health and environment. If DTSC and the Owner are unable to reach agreement on the proposed use or activity, the Owner may appeal DTSC. The Deputy Director shall render a decision on the appeal within 30 days. The DTSC's decision shall be final and thereafter subject to judicial review.

(3) Within 30 days after completion of the work described in the Workplan submitted to DTSC, the Owner shall submit to DTSC a report certified by a qualified California-registered professional engineer, that the work has been

completed in accordance with the Workplan previously approved, and that the Cap has been restored to meet the performance standards for the Cap set forth therein.

(c) Owner covenants that:

(1) Owner shall not perform any excavation or earth movement or any construction of improvements on the Capped Parcel without submitting certification from a qualified California-registered professional engineer that such excavation, earth movement or construction has not impaired the integrity of the Cap. Such certification shall be submitted to DTSC within 30 days after completion of such excavation, earth movement or construction.

(2) Neither the Capped Parcel nor any portion thereof shall be used to build structures for use as (i) hospitals for humans, (ii) schools for persons under 18 years of age, (iii) day-care centers for children, or (iv) any permanently-occupied human dwelling (including hotels or motels which are used as a permanent residence). This paragraph shall not restrict the use

of improvements on the Capped Parcel which are used in conjunction with any use not located on the Capped Parcel that would otherwise be prohibited if conducted on the Capped Parcel.

3.02. Conveyance of Property. The Owner shall not grant, sell, lease or convey the Capped Parcel or any portion thereof without: (1) providing 30 days advance notice to DTSC; (2) providing notice to the transferee as required in California Health and Safety Code Section 25259.7; (3) requiring in the Purchase Agreement that the purchaser comply with the approved plans set forth herein and (4) requiring in the Purchase Agreement that the purchaser be bound by the Limitations set forth in this Covenant. DTSC shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Capped Parcel except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03. Enforcement. Failure of the Owner to comply with any of the limitations, set forth in Paragraph 3.01, shall be grounds for DTSC, by reason of this covenant, to have authority to require that the Owner modify or remove any improvements constructed in violation of that paragraph. Before taking any action hereunder, DTSC shall give Owner written notice of its intention to do so and a period of 45 days after receipt thereof to cure any alleged noncompliance. Violation of the Covenant shall be grounds for DTSC to file civil and criminal actions against the

Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists".

ARTICLE IV VARIANCE AND TERMINATION

4.01. Removal and Variance. Any Owner or, With the Owner's prior written consent, any Occupant of the Capped Parcel or a portion thereof may apply to DTSC for the removal of or variance from the Limitations, as they apply to all or any portion of the Capped Parcel. Any application for such removal or variance shall be governed by Sections 25233 or 25234 of the California Health and Safety Code, as appropriate.

4.02. Term. Unless terminated in accordance with paragraph 4.01 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.01. No Dedication Intended. Nothing set forth herein

shall be construed to be a gift or dedication, or offer a gift or dedication, of the Capped Parcel or any portion there to the general public or for any purposes whatsoever.

5.02. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective when delivered, (1) if personally delivered to the person being served, or to an officer of a corporate party being served, or official of a government agency being served; or (2) in the mail, if mailed by United States mail, postage-prepaid, certified, return receipt requested, to each of the following:

Victor Industrial Batteries
138 North San Fernando Road
Los Angeles, CA 90031

Department of Toxic Substances Control
Chief, Site Mitigation Branch
1011 North Grandview Avenue
Glendale, CA 91201

The above addresses for notices may be changed by any party by notice given to the others in accordance with this paragraphs.

5.03. Partial Invalidity. If any portion of the Limitations set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of this Covenant.

5.05. Recordation. This Covenant shall be executed by the Owner and/ or his designee. This Covenant shall be recorded by the Owner in the County of Los Angeles within ten days of the date of completion.

5.06. References. All references to Code sections include successor provisions, unless found invalid by a court of law or deleted by the Legislature.

5.07. Effective Date. The restrictions on use imposed by Paragraph 3.01 of this Covenant shall become effective upon recordation as provided in Paragraph 5.05.

Dated: 3-24-95

By:

Victor T. Pena

Victor T. Pena
138 North San Fernando Road
Los Angeles, CA 90031

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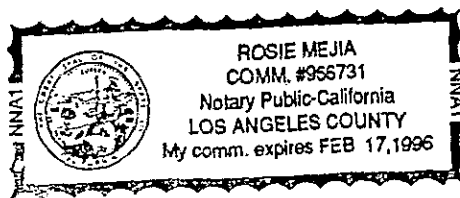
STATE OF

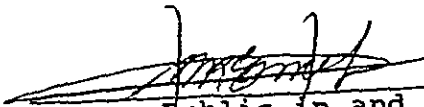
COUNTY OF Los Angeles

SS

On MARCH 24TH, 1995 before me the undersigned, a Notary Public in and for said state, personally appeared VICTOR PENA, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____, of the California Environmental Protection Agency, Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledges to me that such agency executed the same.

WITNESS my hand and official seal.




Notary Public in and for said
County and State

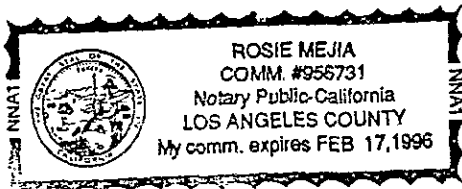
STATE OF

COUNTY OF Los Angeles

SS

On MARCH 24TH, 1995 before me the undersigned, a Notary Public in and for said state, personally appeared VICTOR PENA, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said
County and State

EXHIBIT A

CAP OPERATION AND MAINTENANCE (O&M)

A. INTRODUCTION

This Cap Operation and Maintenance section has been developed how the existing Cap placed over the contaminated material will be maintained (including repairs following a major earthquake). In essence, the exposed Cap surface will be inspected and repaired if necessary. Water accumulated in low area will be removed. Concrete floor slabs, asphalt pavements, and contained utilities within the capped area will be periodically inspected and repaired to maintain the integrity of the Cap.

B. OPERATION AND MAINTENANCE (O&M)

The Cap shall be maintained in place until and except to the extent that DTSC authorizes project in writing to discontinue, move or modify some or all of the Cap.

DTSC shall inspect the condition of the cap (for cracks, vegetation growth, etc.) twice per year for the first two years that the Cap is in place. Thereafter, DTSC shall inspect the condition of the Cap once per year for the next three years. Ongoing maintenance programs should be initiated by the project proponent to maintain the integrity of the Cap at all times.

C. POTENTIAL OPERATING PROBLEMS AND PREVENTION

For so long as the Agreement is in effect, project proponent shall visually inspect the Cap to determine its condition at least on a quarterly basis. In the event that the inspection determines that the Cap is not maintained in good condition, project proponent shall take all appropriate measures to restore the Cap to an impermeable condition and minimize all potential operational problems which might defeat the purpose of the Cap.

D. MONITORING AND ROUTINE INSPECTION

During routine inspections, trained maintenance personnel will look for cracks, vegetation growth, or other surface features that would appear to enhance surface water infiltration. If any areas of concern are apparent, corrective actions (i.e., reseal cracks, and remove and eliminate vegetation growth) will be undertaken as soon as possible. An inspection checklist will be prepared for use by maintenance personnel to adequately document all work.

Following major earthquakes, the Cap surface and covering structures will be inspected for damage and repaired if needed to restore the ability of the Cap to meet the performance standards.

If appropriate, water-bearing utility lines (water lines, storm drains, and sewers) that are located underground will routinely be inspected for breaks, leaks or damages. In case of problems, DTSC shall be notified within a reasonable time period of damages and procedures proposed to repair these damages.

E. MODIFICATION AND ALTERNATIVES

Project proponent shall give DTSC at least 90 days advance written notice prior to any proposed modifications, discontinuation or other disruption of the Cap. The written notice shall be sent by certified mail to the Department at the following address:

Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

The notice shall include a detailed description of the work to be done or modifications to be made and a map showing the exact location of the proposed work and the reasons for modification, disruption or discontinuation.

F. MAINTENANCE REPORTS

Monthly reports of all inspections and correction activities will be prepared and summarized into an annual report and submitted to DTSC until DTSC no longer requires them to be submitted.